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HEALTH CARE

Mr. KYL. Mr. President, my colleague, Senator McCAIN, has spoken to the issue that is on the minds of all Americans today and which the Senate and House of Representatives will again take up as we return from the August recess; that is, how to deal with the issues that confront us in the delivery of health care today without doing damage to the care and the coverage that most Americans have and believe serves them well.

The approach I heard from my constituents over the recess was very similar to what Senator McCAIN has spoken about, which should not seem to be a big coincidence since we represent the same State. On one occasion we called about 50,000 Arizonans, had them on the telephone for about an hour and a half, and asked for their views, and gave our thoughts in response to their questions.

What I have been struck by is the consistency of the views that have been expressed in the various forums I had around the State, consistent with the townhall meetings Senator McCAIN had right in the heart of the Phoenix metropolitan area, views people expressed to me in every location, from the doctor's office I went to, to people meeting with me in my office, to folks at church. The message seems to be pretty much the same. And I think Senator McCAIN articulated it well when he characterized it as anxiety and concern.

One of my colleagues said he denoted in his constituents, in these townhall meetings, real fear. I think that is true. Because even though we know there are some things that need to be done to improve health care delivery in this country, most people, according to surveys, have insurance and believe what they have serves them very well or at least well. Our goal, therefore, is to try to solve the specific problems that exist without doing harm to the system that treats the others.

As I said, a lot of our constituents were very fearful that they were going to have to pay much more in taxes; that their debt burden as a part of what this entire country owes would be increased significantly because of the costs of the health care reforms that have been proposed; that they wouldn't be able to keep the insurance they have even if they like it; that the way they receive care—the advice they get from their doctor about what their family's needs are—would not necessarily be respected if the government has a large role in deciding what to pay for and what not to pay for; and generally that the government's continued takeover piece by piece of the American economy would not serve individual Americans well. To be sure, they agreed that some health care costs are growing too fast and need to be controlled and that

there are some Americans who don't have health coverage and really don't have a way to get it without public health. Those are the two key areas in which they recognize there is a role for government to play in reform.

But they also wonder why certain problems are not being tackled—the problem, for example, of what one characterized as “jackpot justice,” where trial lawyers bring lawsuits and sometimes get big rewards but frequently simply settle the cases, and the net result is that the medical profession in this country—doctors primarily but hospitals and others—spend an enormous amount of money, estimated to be at least \$100 billion a year, on what is called the practice of defensive medicine; that is to say, doing things—ordering tests, referring patients to other physicians and so on—all of which are really unnecessary for the care and treatment of the patient but which will protect the doctor in the event there is a claim of medical malpractice. This happens because the lawyers involved get so-called expert witnesses who come to court and tell the jury that the standard of care in the community is that if the child falls down on the playground and gets a bump on the head, you order a CAT scan. It doesn't matter whether or not from the physician's observations he can see that the child really, if the parents just watch him carefully that evening, should be just fine; no, to protect himself or herself against medical liability or malpractice claims, they order a CAT scan or some other kind of test. The net result of that, as I said, is an expense of over \$100 billion a year in unnecessary medical tests and procedures. The cost of those items, of course, is passed on to all the rest of us.

Another estimate is that 10 percent of every health care dollar is spent on the premiums physicians spend for their malpractice insurance. As lawyers, some of us know you have to pay some money for malpractice insurance before you can start work on January 1. That is fair. But how about \$200,000 in medical malpractice premiums for a neurosurgeon, for example. That is an awful lot of money if you are an OB-GYN, for example. This estimate of 10 percent of health care dollars spent on premiums means that if we could reduce the incidence of malpractice claims, we could reduce that premium cost, the physicians wouldn't have to pass it on to the insurance companies, who wouldn't have to pass it on to us, and again, our health care could be cheaper.

So because of premium costs and because of the practice of defensive medicine, this jackpot justice system has not served us well.

One would think that if we are interested in controlling costs, if we are making insurance more affordable for small businesses—for big businesses, for that matter—for their employees, and for us as individuals, and if we

want to encourage more physicians to stay in practice, then what we would do is tackle this problem. Is there one word about medical malpractice reform in any of the bills, the bill that came out of the HELP Committee in the Senate, the bill currently pending in the Finance Committee, or the bill that came out of the House of Representatives? The answer is no, not a word about medical malpractice reform. Why? Well, Howard Dean, the former Democratic Governor of Vermont and Democratic National Committee chairman, was very honest about this on August 17 at a townhall meeting with Representative MORAN in Virginia. He was asked that question, and he said: When you write a big bill, you don't want to take on too many special interests, and the people who wrote this bill simply didn't want to take on the trial lawyers, and, he said, that is the truth. It is the truth.

The reality is that the President is going to ask everybody else to sacrifice. For example, seniors are going to have to take a \$400 billion to \$500 billion cut in Medicare, which will mean less care for them. If small businesses are going to have to pay a tax on every one of their employees in order to make sure they get covered with insurance; if the pharmaceutical companies are going to have to pony up—I have forgotten how many hundreds of billions of dollars it was for more drugs for seniors, for example; if everybody else is going to have to sacrifice, why didn't we ask the poor trial lawyers to give up just a little bit here? We are not saying malpractice claims couldn't be filed. That is the way doctors and hospitals and others are kept honest. When you make a mistake, you are going to have to pay for it. But we can make sure the system works to prevent the kind of jackpot justice I spoke about.

There are at least five different kinds of medical malpractice reforms that have worked. One was offered by Senator ENZI in the HELP Committee; it is called health courts. The State of Texas and the State of Arizona have both adopted certain kinds of medical malpractice reforms. In Arizona, it has begun to work. In Texas, something like 7,000 doctors have moved into the State, with premiums being reduced by either 21 or 23 percent. In other words, medical malpractice costs can be reduced to provide care, and by reducing that cost, people's premiums can be cut, and that will make insurance more affordable and more people will be able to get it.

My point here is simply to say this: What we found as we talked to our constituents was a fear that in order to solve two or three very discrete problems, there were people here in Washington who wanted to remake the whole system, throw out what we have, and impose on it a new regulatory regime. Whether there is a government option or government insurance plan is only part of the issue. The problem is

that there is government control of everybody irrespective of that, and people are concerned as a result that their care will be rationed, that taxes will go up, and that, in fact, their premiums will go up.

How could that be if we are going to try to make care less expensive? I will give one example. I talked to people who are relatively young and relatively healthy, and they are very aware that if they are put in the same pool with everybody else, with the people who are sicker and older, they are all put into one pot and you can't discriminate on the basis of health condition—and we do believe people with preexisting conditions should be able to get insurance—then, naturally, the people who are younger and healthier are going to be paying more for their insurance than they would if they were in a category all by themselves, and that is what the actuarial data shows us. So it might make insurance more affordable for somebody who is older and sicker, but it will definitely raise the cost of insurance for those who are younger and healthier. There have to be ways to avoid that perverse result. There are, in fact, and Senator MCCAIN talked about a couple of those that I will mention in just a moment.

There ought to be a way to ensure that everyone in this country can get affordable, quality health insurance without taxing all employers, especially small businesses—the very entities we are counting on to bring us out of this recession. We know that almost all of the jobs created in this country in the last 2 or 3 years were created by small business. Large businesses lost—in fact, we have lost about 3 million jobs in this country. In this recession, 3 million jobs have been lost. How are those jobs going to come back? It is going to be through small business. That is where over 80 percent of the jobs are created, and that is where they will be re-created to get us out of this recession. Why, when we are in the middle of this recession, would we want to tax people to say: If you want to hire somebody, it is going to cost you X amount. Why don't we give them an incentive to hire more people, not give them a disincentive through taxation. Why would we raise the taxes of all businesses, including, by the way, raising taxes on insurance? Insurance companies are fun to pick on, I grant. But does the insurance company just pass the cost of that tax that is going to be imposed on it to its premium holders? Of course. There is no free lunch. We end up paying the taxes. As everybody knows, corporations don't pay taxes, people do.

The net result is that when people are concerned about the economy, No. 1, about our rising debt, about the potential they are going to be taxed, and about the need to re-create jobs, what they are telling us and what they told me when I was back home is: Solve those problems first. When you get that solved, then if you still want to

look at health care, go ahead and do that. But in the process of doing that, don't throw the baby out with the bathwater. Don't try to throw out a system that works for most people. If you have a specific problem, target solutions to that problem. You could cover the 12 million people who can't afford insurance and who need to get it today, you could buy them all insurance with the savings you get with malpractice reform. Why don't we do that? The jackpot justice system is a problem in and of itself, and we have a problem because some people can't afford insurance and we need to help them get it. The money we save from one can help pay for insurance for the other. Why not do that? We don't need to change the entire system of health in this country in order to do that.

Since everyone knows Medicare is in trouble, why would we get it in further trouble by cutting it by \$500 billion, and instead applying that savings back in to help make Medicare solvent, provide coverage for people with that money when, in fact, you could get the money elsewhere.

That is what people are concerned about. They see some problems, but they see a solution that does not fit the problems, and they are afraid of it because it is too big, it is too much. People are trying to do it too fast. In fact, one asked why were they trying to rush this bill through before the end of August when it doesn't even take effect in most aspects until the year 2013. Good question. It has been a good thing that the American people have had a chance to consider this, that we have had a chance to read it and we have had a chance to talk about it.

Here is the bottom line. Republicans have a lot of alternatives. Senator MCCAIN talked about them: the malpractice reform; getting rid of the waste, fraud, and abuse in programs such as Medicare; selling insurance across State lines; providing association health plans so that small businesses can compete with the insurance companies in the same way the big businesses compete. These are ideas that can discretely be put into place to solve specific problems, and at the end of the day we will have achieved two things: We will have reduced the cost of health care premiums and the cost of health care for everybody, not just a few, and at the same time we will have been able to, with that savings, provide coverage for people who need it and cannot get it. To do that, it is not necessary to scrap everything we have and create a whole new system where the government takes over health care just as it has insurance and banking and automobiles and everything else.

So that is what I am hearing from my constituents, and I hope, as we are reengaged in this debate, we will do the one fundamental thing our Founding Fathers had in mind when they set up the kind of system we have here, and that is that we will listen to our constituents, never forgetting they are our bosses and we work for them.

I thank the Chair.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, why are we working so hard on health care reform right now? Well, one reason is because the present system is out of control and unsustainable. This is the cost curve of our national health expenditures. In 2009, it hit \$2.5 trillion, and it is going to continue to go up to the point where right now it is estimated that in the year 2016—which is not too far from where we are right now—in the year 2016, a standard family policy on average in Rhode Island will cost that family \$26,000 a year. A middle-class family in Rhode Island cannot afford \$26,000 a year just for health insurance. Something urgent has to be done.

During the 8 years of the Bush administration, it probably increased by nearly \$1 trillion, and nothing got done. Our friends on the other side of the aisle were happy as clams with that state of affairs. Now, in the first year of the Obama administration, with more progress made on health care than at any time since back when the Clintons tried it, we hear once again the catcalls and the criticisms from our colleagues—anything to stand in the way of progress. But that is why it is so important. We simply can't afford not to do so when we look at the risks our country faces economically.

There has been some criticism of the stimulus bill, the Economic Recovery and Reinvestment Act. This is it right here: \$0.8 trillion. From all the noise on the other side of this Chamber, one would think this dwarfed, shadowed the fiscal health of the Republic, but, in fact, it is a tiny little sliver compared to the debt that was run up during the Bush administration. We see that \$8.9 trillion is the difference between what the nonpartisan CBO projected when President Bush took office from President Clinton and when President Bush left us when he was done—\$8.9 trillion. This doesn't even count the Bush hangover of all the spending President Obama has had to do to help save the banks, to help save the financial system, and to help save the American auto industry.

He campaigned on none of that. None of us wanted to do that. When catastrophe asserted itself, we had to respond. The catastrophe took place not on President Obama's watch but beforehand. He has led this effort to put out the fires. The big risk is the \$38 trillion in unfunded liability for Medicare alone. That is part of that climbing cost picture that is driving us out of control.

Of that, the Lewin Group—a pretty respected group around these parts for their opinions on health care—says the

excess costs in the health care system add about \$1 trillion a year: \$151 billion for excess costs for incentives to over-use services; \$519 billion for excess costs from poor care management and lifestyle factors; \$135 billion a year for excess costs due to competition and regulatory factors; \$203 billion a year from excess costs due to transactional inefficiencies.

We can reform this health care system in a way that improves the quality of care, while addressing this \$1 trillion in excess costs, which, according to George Bush's former Treasury Secretary, Paul O'Neil, who ran the Pittsburgh Regional Health Initiative and knows something about health care, is associated with "process failures."

Process failures can be corrected. One of the ways you can correct them is with a competitive public option. We have had a lock in the main middle market of health care by the private insurance market for all these years. This is what we are left with—\$1 trillion in waste from process failures. Obviously, they failed at the job. They have catastrophically, indisputably failed.

All we ask is to put a public option in side by side to compete with them—in the same way a public option in workers' compensation insurance competes in Senator McCain's home State of Arizona with the private insurance providers in workers' compensation. I don't hear complaints from him about the business community and the workers' compensation.

In the home State of Senator ENSIGN, Nevada, there is actually a single-payer public option for workers' compensation health insurance, and his employers seem absolutely fine with it. So it is not as if it is some strange, bizarre idea out on the fringes; it is a way of doing business in some of the home States of the opponents of this.

Our colleagues and their predecessors in this Chamber opposed Medicare when it was first proposed. Now it is probably the most popular program in the country. We have seen them in this Chamber fighting against children's health insurance. It was only thanks to our beloved colleague, Senator KENNEDY, coming back from his sick bed to cast the tie-breaking vote, that we actually were able to win that against Republican opposition.

The ideas they have seem, to me, to be abject failures. One is to continue the lock for private health insurance companies so they are the only place you can get coverage, unless you are old enough for Medicare or you qualify for Medicaid or you are in the military. That is clearly not a sign of success.

As Senator McCain indicated, it would be good to be able to cross State lines and buy insurance from out-of-State insurance companies. Yes, look how well that turned out for us with the credit card industry. We just had to pass legislation, thanks to Chairman DODD, to rein in the abuse and practices of the credit card industry be-

cause you can go to practically unregulated States and get credit cards that don't have basic consumer protections.

We don't want to see that in health insurance. We want careful, thoughtful local regulation of health insurance. We have 100,000 people who are killed every year by medical errors—and who knows how many injured—and the solution our friends across the aisle see is to take away the damages that the worst injured Americans are entitled to. That is how the reform they proposed in the HELP Committee works. It cuts damages, caps them, meaning it only would affect the people for whom the damages are the highest, who are harmed the worst, who would disproportionately be women because of the way it was organized, focusing on economic damages. So if you take a system where you kill 100,000 Americans every year because of medical errors—and injure who knows how many more—and your solution to the problem is to put the cost of it entirely on the backs of the worst victims of that error and injury, I think that is a mistake.

We would prefer, as Democrats—and I think as rational people—to reduce the incidence of malpractice and error, reduce the errors of malpractice claims by reducing the incidence of malpractice and error. We put enormous effort in this bill into putting structures into place to allow that to happen.

In terms of the real fear people heard when they went back home, it was a little disingenuous when that fear was whipped up by our colleagues with false statements about death panels in the legislation, how this was socialized medicine, and how a bureaucrat would jump in between you and your doctor if the bill passed. That is patently false. It spread like wildfire. Who wouldn't be afraid of those things? Now they observe there is real fear out there. I also had the opportunity to travel around my State during this break, similar to many colleagues, and I sat down with my constituents and heard what they had to say about health care reform. I sat down with hospital executives; pediatricians; OB/GYNs; family physicians; critical care doctors; the State medical society; health insurers; CVS, the pharmaceutical chain that makes its home in Rhode Island; the Rhode Island MS chapter; business community leaders; members of our Rhode Island quality institute, which is reforming health care at the State level and it gives great leadership to our country right now; and with members of all walks of life who have come together and are working tirelessly to help build our State's information technology infrastructure.

I learned a great deal from those individuals and institutions. I learned a great deal also at two community dinners I held in West Warwick and in Johnston, RI, where hundreds of Rhode Islanders came out to join me and our senior Senator JACK REED, not only for

spaghetti and meatballs—and they were good. I think I might be the only Senator to introduce meatballs into the townhall formula, and it worked fine. They were for a serious, civil, and constructive debate on the state of our current health care system. It brought out some stories I wish to share quickly this afternoon.

The first story is about Christine, who is a wife and mother, from Coventry, RI. Her family's struggle to maintain health insurance has left her and her husband with very difficult choices and few options. In 2007, Christine was diagnosed with multiple sclerosis. Shortly thereafter, she lost her job. She was shifting the family's coverage to her husband's employer, when her husband was laid off as well. That left Christine and her husband and their 6-year-old son with no health insurance. Still reeling from those bits of bad news, Christine and her husband were faced with decisions no one should be forced to make. Without medical insurance, with no affordable options for health coverage because of Christine's preexisting condition, they faced a choice now of leaving their home—think about that. You have a 6-year-old son who might lose his home—or paying for health insurance. At the moment, they cannot see a way to manage both.

As Christine told me:

I don't want any handouts. Unfortunately, life has handed me and my family a difficult path, and right now my family needs a little help. We should not have to make a decision between our health and our financial stability.

Until her husband finds a job, Christine says that every day they hold their breath and pray nothing will happen because that is all our broken health care system now has to offer them.

I also met Anna from Johnston, RI, who shared the story of her sister Tina. As is the story of so many today, Tina's husband lost his job. Their only option for health insurance was through COBRA. At \$1,500 a month, on top of mortgage and car payments and groceries, Tina knew, financially, this coverage was unsustainable. Finally, she had to give it up.

Shortly after dropping coverage, Tina began to lose weight. Anna explained that, at first, she thought her sister's weight loss was a reaction to the stress of the family's financial situation. But then the weight loss continued, and they realized something was seriously wrong. Despite urging from her family, Tina resisted going to the doctor because she was afraid the medical bills would make a very difficult financial situation unbearable.

Eventually, Tina felt so sick they called the ambulance, and she was taken to the hospital. Tina died 3 days later of a heart attack, complicated by bone cancer and diabetes. When Anna talked to the doctor who treated Tina, they asked the family why Tina had avoided coming to the hospital for so

long because, with proper early intervention, her sister's conditions would have been treatable.

Anna told me she understands people get sick and die, but the manner in which her sister passed away was tragic because it didn't have to happen.

Over the August recess, I also heard from Rhode Islanders through the health care storyboard I ran on my Web site. Two of the stories are remarkable.

The first is from Ken, a recent Rhode Island College graduate from Greenville. He worked hard, dreaming he would be the first in his family to achieve a college degree. A year after graduation, Ken has that college degree, but he cannot find a full-time job with health insurance benefits. In this difficult economy, he works two part-time jobs at minimum wage, and he has no health benefits.

Ken wasn't looking to make a six-figure salary after graduation, but he was looking to be able to get by. On his current income, he has difficulty making ends meet with his day-to-day expenses, and he says it will take years to pay off his student loans at this rate.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WHITEHOUSE. I ask unanimous consent for 5 more minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WHITEHOUSE. Ken is having a hard time making ends meet with his day-to-day expenses, and it will take years to pay off his student loans. On such a limited income and in this situation, health insurance is simply not an option for Ken.

Ken is discouraged and frustrated. Despite his hard work and achievement, he knows that at any moment he is one sickness or injury away from thousands of dollars in debt or ruined credit that would affect his chances for a prosperous future. He has worked for everything he has earned, but health care costs are so high he is scared about his future, if nothing is done to fix our health care system.

Last is Beth, a small business owner in Providence. She and her husband have two full-time and two part-time employees. They find themselves at the whim of insurance companies. Because they don't have the bargaining power to negotiate the terms of their health insurance package, they have seen 41 percent increases in their insurance rates for 2 years in a row.

Beth told me the cost of health insurance is breaking the backs of small entrepreneurs, those critical drivers of innovation and building blocks of our Nation's economy. She doesn't understand how or why anyone would start their own business under the deep financial burdens imposed on small business by our current health insurance system.

Beth also cannot afford health insurance coverage for her twin 3-year-old

girls. Beth admits she is terrified about what might happen to them without the safety net that health coverage offers. She urges us to work quickly toward reform so others do not have to struggle with the same fear and frustration as her family.

The Senate has been working hard on health reform legislation since the very beginning of this year. The process is trying and tiring and extremely complex. As we turn up the heat even more the next few weeks and become mired in the intense process of drafting a final bill and getting it to the floor, I urge my colleagues to remember health care reform is not about the interest groups, it is not about parliamentary procedures, it is not about secret meetings, and it is not about CBO scores. Reforming our health care system in America is about Christine and Tina and Beth and Ken and thousands like them in every one of our States across the country. And it means injecting some fairness and some reason into a system that has punished the sick, rewarded the greedy, and discouraged those who try to do the right thing.

For me, these stories reinforce the urgency of what we need to get done in the Senate. I am fully committed to completing this task, as I know the Presiding Officer is, and I look forward to getting it done over the next few weeks.

In closing, let me just say this is the first time I have spoken on the Senate floor since our colleague, Senator KENNEDY, has left us. His desk is three down from me. I don't know if the camera shows it now, but there is a black drape over it and some flowers and a copy of Robert Frost's "The Road Less Traveled." I know this poem meant a lot to him, and he certainly meant a lot to me as a very gracious mentor with vast experience who could easily have ignored a new colleague. But he took an interest, and I will never forget his kindness to me.

We all will miss his booming voice. He could fill this Chamber with his voice. We will miss his rollicking good humor. No one enjoyed life and enjoyed his colleagues more than the senior Senator from Massachusetts. We will miss his masterful legislative skills as we try to work our way through the obstructions the other side will be throwing up against progress on health care reform. His wise voice and counsel will be missed.

Finally, we will miss his lion's heart. He knew when the fight was right, he knew when it was worth fighting for, and he was in it to win it.

TED, God bless you. We miss you.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, let me follow on the remarks of my colleague

from Rhode Island as he discussed briefly at the end of his remarks the loss of our colleague and friend, Senator TED KENNEDY.

The desk that is now cloaked in black and adorned with flowers is a desk that was once occupied by Senator John F. Kennedy, then occupied by Senator Robert Kennedy, and for many years occupied by Senator TED KENNEDY.

He was an extraordinary friend to all of us, a remarkable legislator. This is not a case of the Senate just losing one Senator. He was such a much larger presence than that in the public life of our country and particularly in the workings of this Congress.

My thoughts and prayers have been with TED KENNEDY and his family over these many months as he has battled brain cancer. Now, since his death, we have all reflected on what he meant to us and to this country.

Today it seems inappropriate to take the floor of the Senate without at least acknowledging the absence of our friend, TED KENNEDY, and to send our prayers to his family.

WASTE, FRAUD, AND ABUSE IN PUBLIC SPENDING

Mr. DORGAN. Mr. President, when Senator KENNEDY would come to the floor with a booming voice, full of passion about an issue, it was an extraordinary thing to watch and to listen to. He had that kind of passion. I do want to say there are a lot of things for us to be passionate about. One of the things I have talked about on the floor of the Senate is the waste, fraud and abuse in public spending. All of us believe in investing in programs that work to try to help make life better in this country and advance the interests of this country. But it makes me furious to see the kinds of things I see from time to time that represent waste, fraud, and abuse and unbelievable incompetence. Let me describe just one.

We know this not because of some extraordinary work by this body. We know this because of some extraordinary work by C.J. Chivers and Eric Schmitt at the New York Times because they wrote a story about it.

Let me tell you the story, and I am sure it will make every American as angry as it makes me. This is a picture of Efraim Diveroli, a 22-year-old CEO of a firm awarded \$300 million in U.S. contracts to provide armaments, bullets, and guns to the Afghan fighters. That is right. A 22-year-old man using a shell corporation established by his father, working out of a building with an unmarked door in Miami, got \$300 million in contracts from the Department of Defense. He was a CEO. By the way, there is no evidence of any other employees except him and his vice president. Yes, his vice president was older, 25 years old and a massage therapist.

Let me say that again. The Department of Defense gave \$300 million in